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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights,  
civil, political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by Friends World Committee for Consultation (Quakers), a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[4 May 2010]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## Conscientious Objection to Military Service

Friends World Committee for Consultation (Quakers) welcomes the Human Rights Committee's views in the case of Messrs. Eu-min Jung, Tae-Yang Oh, ChangGeun Yeom, Dong-hyuk Nah, Ho-Gun Yu, Chiyun Lim, Choi Jin, Tae-hoon Lim, Sung-hwan Lim, Jae-sung Lim, and Dong-ju Goh v Republic of Korea<sup>1</sup>. The Human Rights Committee unanimously upheld the protection of conscientious objection to military service under Article 18(1) of the International Covenant on Civil and Political Rights, without distinguishing between the religion or belief on which that conscientious objection was based, finding that the State actions were an 'infringement of their freedom of conscience and a restriction on their ability to manifest their religion or belief'. Amongst the applicants in this case were a Buddhist, a Catholic and a number whose conscientious objections were not based on a specific religion. This decision reinforces the Committee's 2006 case in which it held that conscientious objection to military service was a protected manifestation of the right to freedom of religion and belief.<sup>2</sup>

FWCC (Quakers) urges the Government of the Republic of Korea to implement this decision promptly and in full by recognising the right of conscientious objection to military service and providing alternatives for conscientious objectors.

The UN Working Group on Arbitrary Detention's Opinions Nos. 8/2008 (Colombia) and 16/2008 (Turkey)<sup>3</sup> are also important. In Opinion 16/2008, concerning Turkish conscientious objector Halil Savda, who had been subjected to four separate periods of imprisonment following his refusal to perform military service, the Working Group stated "The Government of Turkey has not put forward any arguments justifying the absence of any legislation accommodating conscientious objectors (...) In the view of the Working Group, it has been established that the limitations on Mr. Savda's right to freedom of religion or belief as a genuine conscientious objector is not justified in the present case, and is, thus, in violation of article 18 of the Universal Declaration of Human Rights and of article 18, paragraph 1 of the ICCPR. Accordingly, the criminal prosecution, sentencing and deprivation of liberty of Mr. Savda for holding and manifesting his belief and conscience is arbitrary." (para 38). The Working Group not only reaffirmed its previous findings<sup>4</sup> which had "declared arbitrary the detention of conscientious objectors following a second conviction on the grounds that this would be tantamount to compelling a person to change his or her convictions and beliefs for fear of not being subjected to criminal prosecution for the rest of one's life, being incompatible with the principle of double jeopardy or ne bis in idem, thus violating article 14, paragraph 7 of the ICCPR" (para 39); but goes on (para 44) to emphasise that the breach of the rights guaranteed by article 18 meant that all the periods of imprisonment, including the first, were arbitrary detention.

Opinion 8/2008 concerned three youths detained by the Colombian army in the course of batidas - random mass forced recruitments in public places. Two of the three were declared conscientious objectors to military service. The Working Group observed that the penalties stipulated for non-compliance with the military recruitment law are fines only. "Under no

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<sup>1</sup> CCPR/C/98/D/1593-1603/2007, issued 14 April 2010

<sup>2</sup> *Yeo-Bum Yoon and Myung-Jin Choi v. the Republic of Korea*, Communication no. 1321/2004 and 1322/2004, Views adopted by the Committee on 3 November 2006

<sup>3</sup> A/HRC/10/21/Add.1

<sup>4</sup> See Opinion No. 36/1999 (Turkey) (E/CN.4/2001/14/Add.1); Recommendation No.2 (E/CN.4/2001/14); Opinion No.24/2003 (Israel) (E/CN.4/2005/6/Add.1), and also Para 55 of the Human Rights Committee's General Comment No. 32 (CCPR/C/GC/32), 23 August 2007 (footnote in the original).

circumstances are arrest, detention and involuntary incorporation into the army authorised.”(para 22). "The detention of those who have expressly declared themselves conscientious objectors has neither juridical support nor a legal basis, and their incorporation into the army against their will is a clear violation of their affirmation of conscience, such as might breach article 18 of the International Covenant on Civil and Political Rights. Not to accommodate the right to conscientious objection can be a violation of this article. Nor is there any legal basis or juridical support for (...) 'batidas', 'redadas', or 'levas' for the purpose of detaining in the streets and public places young men who cannot produce documentation of their military situation.” (para 23). The Working Group therefore found all three detentions to be arbitrary, in breach of article 9 of the ICCPR, and those of the conscientious objectors to be also in breach of article 18.

FWCC (Quakers) welcomes the Colombian Constitutional Court's recent ruling, probably taking account of the international developments, that conscientious objection to military service is protected under the Constitution and that the Government must, therefore, legislate to provide for it. Under the UN Human Rights Council's Universal Periodic Review (UPR), the Colombian Government rejected the recommendation that it should recognize the right of conscientious objection to military service “in law and practice and ensure that recruitment methods allow it (and) guarantee that conscientious objectors are able to opt for alternative service, the duration of which would not have punitive effects,” on the basis that “The Colombian Constitution and the legal framework establish that all citizens have the obligation to enroll in the military service when the circumstances so require to defend the National sovereignty and the public institutions and to provide security conditions for all citizens. This obligation has been upheld on several occasions by the jurisprudence of the Constitutional Court.”<sup>5</sup> In the light of the new ruling by the Constitutional Court, we call on the Government to promptly implement provisions recognising conscientious objection to military service, and to ensure that, in the meanwhile, conscientious objectors are not forcibly recruited.

FWCC (Quakers) calls on all other Governments to whom recommendations about conscientious objection to military service were addressed under the UPR, in particular Eritrea, Israel, Serbia and Turkmenistan, to provide full and effective provision for conscientious objection to military service and to cease punishing conscientious objectors with immediate effect.

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<sup>5</sup> A/HRC/10/82/Add.1, p 4, referring to the recommendation in Paragraph 37(a) of the Report of the Working Group (A/HRC10/82)